

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington, D.C. 20350

SECNAVINST 6300.3
JAG:14C
14 March 1978

SECNAV INSTRUCTION 6300.3

From: Secretary of the Navy
To: All Ships and Stations

Subj: Medical Malpractice Claims Against Military
and Civilian Personnel of the Armed Forces

Ref: (a) DOD Directive 6000.6 of 24 August
1977
(b) Public Law 94-464, § 1(a), 90 Stat.
1985, Title 10, United States Code,
Section 1089
(c) Title 10, United States Code, Section
2733, Military Claims Act
(d) Title 28, United States Code, Section
1346(b)

1. **Purpose.** This instruction implements reference (a) by assigning responsibility for administering the provisions of reference (b) to the Judge Advocate General.

2. **Background.** Prior to enactment of reference (b), some health-care officials were immune from suit by the legal doctrine of official immunity; however, the outcome of any judicial decision on a particular fact situation could not be predicted with any certainty. The intent of the Congress in passing reference (b) was to insulate all Department of Defense, Coast Guard, and Central Intelligence Agency medical personnel from the expense of defending malpractice suits and the cost of paying judgments or settlements in such suits.

3. **Effective date.** Reference (b) pertains only to those claims accruing on or after 8 October 1976.

4. **Persons Covered.** All physicians, dentists, nurses, pharmacists, paramedical or other supporting personnel, including medical and dental technicians, nursing assistants, and therapists of the Armed Forces, the Department of Defense, or the Central Intelligence Agency performing medical, dental, or related health-care functions (including clinical studies and investigations) are covered so long as the alleged malpractice

occurred while acting in the scope of duties or employment.

5. **Scope of Employment.** All officially assigned duties are considered to be in the scope of employment. This includes, among other things, health care performed by Navy personnel assigned to a civilian hospital, and health care performed by civilians training with or otherwise assigned to the Navy. Scope of employment does not include employment of Navy personnel at civilian health care facilities during nonduty hours ("moonlighting").

6. **Extent of Protection.** Reference (b) extends coverage within the United States and its possessions by making suit against the United States under the Federal Tort Claims Act the exclusive remedy for an injured party. Where the Federal Tort Claims Act does not apply (as, for example, where the acts giving rise to the claim occurred outside the United States), coverage is provided by allowing the Secretary of Defense to hold harmless or provide liability insurance for health care personnel.

7. **Exercise of Authority.** By reference (a), the Secretary of Defense delegated to the Secretary of the Navy the authority to hold harmless or provide liability insurance for Navy health care personnel. All persons referred to in paragraph 4 above and in subsection (a) of reference (b) are hereby held harmless for damages resulting from negligent or wrongful acts or omissions while acting within the scope of duties and assigned to duty in a foreign country, or detailed for service with other than a Federal agency, or if the circumstances are such as are likely to preclude remedy against the United States under the Federal Tort Claims Act, as provided by subsection (f) of reference (b).

8. **Action**

(a) **By the defendant.** Health care personnel of the Department of the Navy who are sued for Navy-related activities shall immediately deliver all process and pleadings served upon them (or an attested true copy thereof) to the commander of the naval



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installation where they were attached at the time of the incident giving rise to the suit.

(b) By a commanding officer

(1) Upon receipt of process and pleadings as provided above, the commanding officer shall promptly furnish copies to the appropriate United States Attorney, to the Attorney General, and to the Secretary of the Navy (Judge Advocate General).

(2) Upon receipt of process or pleadings, or upon notice of any claim or potential claim, an investigation conforming to Chapter XX, JAG Manual, shall be conducted promptly and the commanding officer shall report in the endorsement whether or not the acts giving rise to the claim were performed in the scope of official duties or employment.

(3) Upon learning that a claim or lawsuit has been filed, the Judge Advocate General (Code 14C) shall be notified immediately by message or telephone. If no investigation was conducted, such will be expedited. Certified copies of all claims, service of process, and pertinent papers shall be forwarded by ordinary mail to the Judge Advocate General (Code 14C) and to the Officer in Charge of the nearest Naval Legal Service Office.

(c) By the Judge Advocate General. The Judge Advocate General may redelegate authority and

assign tasks to appropriate naval commands to ensure the following:

(1) The Judge Advocate General shall maintain liaison with the Attorney General and the appropriate United States Attorney.

(2) The Judge Advocate General shall provide the Attorney General adequate information upon which to base the scope-of-employment determinations required by reference (b).

(3) The Judge Advocate General shall monitor each case to ensure that, whenever appropriate, such cases shall be transferred to the appropriate U.S. District Court and deemed a tort case against the United States.

(4) The Judge Advocate General shall arrange through the Department of Justice to defend actions brought against Navy health care personnel for acts performed in the scope of their duties or employment. The procedures of the Military Claims Act (10 U.S.C. § 2733) shall be used to determine costs, settlements, or judgments against such individuals.

W. GRAHAM CLAYTOR, JR.
Secretary of the Navy

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